

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number: EB-02-BF-058
BanJo Communications Group, Inc.)	EB-02-BF-059
AM Broadcast Station WCHN)	EB-02-BF-060
FM Broadcast Station WBKT)	
FM Broadcast Station WKXZ)	NAL/Acct.No.:200232280001
Oneonta, New York)	
)	FRN: 0003-7815-98

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 18, 2002

By the Resident Agent, Buffalo Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that BanJo Communications Group, Inc., (“BanJo”), licensee of radio stations WKXZ(FM), WBKT(FM), and WCHN(AM), has apparently violated Sections 1.89(b), 11.35(a), and 11.61(a) of the Commission's Rules and Regulations (“Rules”)¹, by failing to respond to Commission communications, failing to have installed an operational Emergency Alert System (“EAS”), and failing to determine and log the reasons why EAS monthly and weekly tests were not being received and retransmitted properly. We conclude that BanJo is apparently liable for forfeiture in the amount of twenty three thousand dollars (\$23,000).

II. BACKGROUND

2. On March 14, 2002, Agent Gene Stanbro from the Commission’s Buffalo Office inspected BanJo facilities in Norwich, New York to verify compliance with the Commission’s EAS requirements. Agent Stanbro’s inspection revealed each broadcast station (WKXZ(FM), WBKT(FM), and WCHN(AM)) was in violation of the EAS rules. The three stations were sharing a common control point and a single EAS system. Based on examination of EAS equipment and records at BanJo, the agent determined WKXZ(FM), WCHN(AM), and WBKT(FM) did not have installed an operational EAS system, or any record of receiving monthly or weekly tests from any assigned EAS monitoring source. WKXZ(FM), WBKT(FM), and WCHN(AM) had no record of transmitting weekly or monthly tests. There were no EAS logs, for WBKT(FM), WKXZ(FM), or WCHN(AM), for at least two years. The EAS printer was out of paper, no one at the station was able to locate or install a new roll of paper. No one at the station was able to tell the inspector the last time an EAS test was received or transmitted.

3. On March 25, 2002, Agent Stanbro of the Buffalo Office issued Official Notices of Violation

¹ 47 C.F.R. §§ 1.89(b), 11.35(a) and 11.61(a).

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(“NOV”) to BanJo stations WKXZ(FM), WBKT(FM), and WCHN(AM), for violations found during the March 14, 2002 inspection. Agent Stanbro cited the stations for non-compliance with Sections 11.15, 11.35, 11.61(a)(1), 11.61(a)(2), and 73.1820(a)(1) of the Rules.²

4. As of April 30, 2002, the Buffalo Office had not received a response from BanJo. Agent Stanbro called Mr. James Johnson, President of BanJo and asked why they had not replied to the Notices of Violation as required by the Rules and Regulations. Mr. Johnson stated a reply would be in the mail within the next two days. To date, the Buffalo Office has not received any reply.

III. DISCUSSION

5. Section 1.89(b) of the Rules requires that within 10 days, or such period as may be specified, of receipt of a Notice of Violation, the recipient shall send a written answer to the office originating the official notice. If an answer cannot be sent or an acknowledgement cannot be made within such 10-day period by reason of illness or other unavoidable circumstance, acknowledgement and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay.

6. Section 11.35(a) of the Rules states that stations are responsible for ensuring that EAS encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations are in operation. Additionally, stations must determine the cause of any failure to receive the required tests or activations. Appropriate entries must be made in the broadcast station log indicating reasons why tests were not received.

7. Section 11.61(a) of the Rules requires stations to test EAS equipment at regular intervals. Stations may activate EAS for emergencies or special tests at the State or local level instead of the monthly or weekly tests required by this section.

8. Based on the evidence before us, we find that BanJo willfully³ and repeatedly⁴ violated Sections 1.89(b), 11.35(a) and 11.61(a) of the rules by failing to respond to Commission communications, by failing to have an operational EAS system, and by failing to determine and log the reasons why EAS tests were not being received from each of its two assigned monitoring sources and why the stations did not determine and log the reasons for failed required test activations. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd

² 47 C.F.R. §§ 11.15, 11.35, 11.61(a)(1), 11.61(a)(2) and 73.1820(a)(1).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provide that “the term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

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17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”)⁵, sets the base forfeiture amount at \$4,000 for failure respond to Commission communications, sets the base forfeiture amount at \$8000 for failure to install and have operational EAS equipment, and the base amount at \$1000 for failure to maintain required records. Since each of the stations failed to respond and failed to maintain the required records, the total for failure to respond is \$12,000, and the total for failure to maintain required records is \$3000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 (“Act”), as amended,⁶ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. The record reveals that BanJo does have an overall history of compliance. However, the violation is egregious. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a twenty three thousand dollar (\$23,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷, and Sections 0.111, 0.311 and 1.80 of the Rules⁸, BanJo Communications Group, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty three thousand dollars (\$23,000) for willful and repeated violation of Sections 11.35(a), 11.61(a), and 1.80(b)(4) of the Commissions Rules.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, BanJo Communications Group, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No.200232280001 and FRN: 0003-7815-98.

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No.200232280001.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2)

⁵47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b)

⁸ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

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financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to BanJo Communications Group, Inc., 34 Chestnut Street, Oneonta, NY 13820.

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro
Resident Agent
Buffalo Office

⁹ See 47 C.F.R. § 1.1914.